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Filing date: **09/09/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	NSE Products, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	75 WEST CENTER STREET PROVO, UT 84601 UNITED STATES		

Attorney information	Hope Hamilton Holland & Hart LLP PO Box 8749 Denver, CO 80201 UNITED STATES docket@hollandhart.com, hihamilton@hollandhart.com, mhorlach-er@hollandhart.com, mamooore@hollandhart.com, baadams@hollandhart.com
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Registration Subject to Cancellation

Registration No	4656152	Registration date	12/16/2014
Registrant	NuGene Inc. 720 Paularino Ave Suite 260 Costa Mesa, CA 92626 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2014/04/28 First Use In Commerce: 2014/04/28
All goods and services in the class are cancelled, namely: Cosmetic preparations for skin renewal; Eye cream

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1542160	Application Date	05/20/1987
Registration Date	06/06/1989	Foreign Priority Date	NONE
Word Mark	NU SKIN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1984/06/25 First Use In Commerce: 1984/06/25 COSMETICS, NAMELY, HAND AND BODY LOTIONS, SHAMPOO, FACIAL SCRUBS AND MOISTURIZERS

U.S. Registration No.	4268340	Application Date	07/19/2012
Registration Date	01/01/2013	Foreign Priority Date	NONE
Word Mark	NU SKIN		
Design Mark			
Description of Mark	The mark comprises the wording "NU SKIN" and a stylized representation of a fountain within a circle above the wording.		
Goods/Services	<p>Class 003. First use: First Use: 2009/10/01 First Use In Commerce: 2009/10/01 Cosmetic creams for skin care; Cosmetichand creams; Cosmetic nourishing creams; Cosmetic preparations for skin care; Cosmetic preparations, namely, firming creams; Cosmetics; Cosmetics and cosmetic preparations; Face creams for cosmetic use; Lotions for cosmetic purposes; Skin conditioning creams for cosmetic purposes</p> <p>Class 005. First use: First Use: 2010/09/08 First Use In Commerce: 2010/09/08 Dietary and nutritional supplements; Dietary and nutritional supplements used for weight loss; Dietary supplemental drinks; Dietary supplements; Dietary supplements in the nature of weight loss powders; Mineral supplements; Nutritional</p>		

	supplement shakes; Nutritional supplements; Powdered nutritional supplement drink mix; Vitamin supplements; Weight management supplements Class 032. First use: First Use: 2010/09/08 First Use In Commerce: 2010/09/08 Beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements
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U.S. Registration No.	1551560	Application Date	10/06/1988
Registration Date	08/15/1989	Foreign Priority Date	NONE
Word Mark	NU SKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1987/09/15 First Use In Commerce: 1987/10/10 COSMETICS AND PERFUMERY PRODUCTS, NAMELY, PREPARATIONS AND LOTIONS FOR THE CARE OF THE SKIN AND OF THE HAIR, SKIN CLEANSING LOTIONS, FACIAL SCRUBS, SKIN REVITALIZING CLAYS AND COMPOSITIONS, SKIN TONERS, SKIN MOISTURIZERS, SKIN REJUVINATING CREAMS, FACIAL LIFT COMPOSITIONS, [BODY CLEANSING GELS, EXFOLIATORS, HAND LOTIONS,] BODY LOTIONS, SHAVING LUBRICANTS, AFTER SHAVE LOTIONS, SUN PROTECTANTS FOR THE SKIN, SHAMPOOS AND HAIR CONDITIONERS		


U.S. Registration No.	1433479	Application Date	06/10/1985
Registration Date	03/24/1987	Foreign Priority Date	NONE
Word Mark	NU SKIN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1984/06/25 First Use In Commerce: 1984/06/25 COSMETICS, NAMELY, HAND AND BODY LOTIONS, SHAMPOO, FACIAL SCRUBS AND MOISTURIZERS

U.S. Registration No.	2394310	Application Date	04/14/1999
Registration Date	10/10/2000	Foreign Priority Date	NONE
Word Mark	NU SKIN 180		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 Cosmetics, preparations and lotions for the care of the skin, namely, skin cleansing lotions, skin cleansing soaps, facial scrubs, mask packs of mud and/or clay, skin toner, skin moisturizers, body cleansing gels, exfoliators, hand lotions, body lotions, shaving lubricants, after shave lotions and sun screen for the skin		

U.S. Registration No.	3037497	Application Date	04/15/2003
Registration Date	01/03/2006	Foreign Priority Date	NONE
Word Mark	NU SKIN CLEAR ACTION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/05/30 First Use In Commerce: 2002/05/30 Skin toners, facial creams, facial lotions		

U.S. Application No.	86503747	Application Date	01/14/2015
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NU SKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1984/06/01 First Use In Commerce: 1984/06/01 Body and beauty care cosmetics; Cleansing creams; Cosmetic creams; Cosmet- ic creams for skin care; Cosmetic hand creams;Cosmetic nourishing creams; Cosmetic preparations against sunburn; Cosmetic preparations for bath and shower; Cosmetic preparations for protecting the skin from the sun's rays; Cos- metic preparations for skin care; Cosmetic preparations forthe care of mouth and teeth; Cosmetic preparations for the hair and scalp; Cosmetic preparations, namely, firming creams; Cosmetic preparations, namely, firming lotions; Cos- metic soaps; Cosmetic sun-protecting preparations; Cosmetic sunscreen prepar- ations; Cosmetics; Cosmetics and cosmetic preparations; Essential oils; Essen- tial oils for aromatherapy use; Face creams for cosmetic use; Foams containing cosmetics and sunscreens; Lotions for cosmetic purposes; Non-medicated hair treatment preparations for cosmetic purposes; Skin conditioning creams for cos- metic purposes; Wrinkle-minimizing cosmetic preparations for topical facial use</p> <p>Class 010. First use: First Use: 2006/03/10 First Use In Commerce: 2006/03/10 Cosmetic apparatus using ultrasound forperforming aesthetic skin treatment pro- cedures; Facial toning machines for cosmetic use; Medical devices for nonsur- gical cosmetic treatments</p>		

Attachments	73661858#TMSN.png(bytes) 85681553#TMSN.png(bytes) 73756273#TMSN.png(bytes) 73542128#TMSN.png(bytes) 75682625#TMSN.png(bytes) 86503747#TMSN.png(bytes) Petition to Cancel NUEYE.pdf(54814 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Hope Hamilton/
Name	Hope Hamilton
Date	09/09/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NSE PRODUCTS, INC., Petitioner, v. NUGENE, INC., Respondent.	Cancellation No.: Trademark: NUEYE Reg. No.: 4656152
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PETITION FOR CANCELLATION


NSE Products, Inc. (“Petitioner”), a Delaware corporation, believes that it will be damaged by the continuing registration by NuGene, Inc. (“Respondent”), a California corporation, of the trademark NUEYE shown in Registration No. 4656152 for “Cosmetic preparations for skin renewal; Eye cream” in International Class 3 (the “Registration”) and hereby petitions for cancellation of the same. As grounds for its petition, Petitioner alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Over the past thirty years, Petitioner has established itself as a premier anti-aging company associated with innovation and high quality personal care, nutrition, and technology products.
2. Among Petitioner’s many leading products are its skin care products, including moisturizers, peels, masks, scrubs, cleansers, sun protection, and cosmetics. As a result of Petitioner’s success, and its extensive promotional efforts, the NU SKIN trademark has become famous.

3. Since at least as early as 1984, and well prior to the registration date and alleged dates of first use in Respondent's Registration, Petitioner has established a family of NU SKIN marks used in connection with skin care products, including moisturizers, peels, masks, scrubs, cleansers, sun protection, and cosmetics.

4. Petitioner's NU SKIN marks are the subject of the following federal trademark registrations (the word "SKIN" is disclaimed in all):

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>REG./FILE DATE</u>	<u>GOODS</u>
	1542160	June 6, 1989	Cosmetics, namely, hand and body lotions, shampoo, facial scrubs and moisturizers
	4268340	Jan. 1, 2013	Cosmetic creams for skin care; cosmetic hand creams; cosmetic nourishing creams; cosmetic preparations for skin care; cosmetic preparations, namely, firming creams; cosmetics; cosmetics and cosmetic preparations; face creams for cosmetic use; lotions for cosmetic purposes; skin conditioning creams for cosmetic purposes
	1551560	Aug. 15, 1989	Cosmetic and perfumery products, namely preparations and lotions for the care of the skin and of the hair, skin cleansing lotions, facial scrubs, skin revitalizing clays and compositions, skin toners, skin moisturizers, skin rejuvenating creams, facial lift compositions, body lotions, shaving lubricants,

			after shave lotions, sun protectants for the skin, shampoos and hair conditioners
	1433479	Mar. 24, 1987	Cosmetics, namely, hand and body lotions, shampoo, facial scrubs and moisturizers
NU SKIN 180	2394310	Oct. 10, 2000	Cosmetics, preparations and lotions for the care of the skin, namely, skin cleansing lotions, skin cleansing soaps, facial scrubs, mask packs of mud and/or clay, skin toner, skin moisturizers, body cleansing gels, exfoliators, hand lotions, body lotions, shaving lubricants, after shave lotions and sun screen for the skin
NU SKIN CLEAR ACTION	3037497	Jan. 3, 2006	Skin toners, facial creams, facial lotions

5. The registrations for each of the marks set forth above are valid and subsisting and therefore constitute *prima facie* evidence of the validity of the marks and registrations, and of Petitioner's exclusive rights to use the marks in connection with the goods set forth in these registrations.

6. Petitioner also owns a pending application for the word mark NU SKIN covering "Body and beauty care cosmetics; Cleansing creams; Cosmetic creams; Cosmetic creams for skin care; Cosmetic hand creams; Cosmetic nourishing creams; Cosmetic preparations against sunburn; Cosmetic preparations for bath and shower; Cosmetic preparations for protecting the skin from the sun's rays; Cosmetic preparations for skin care; Cosmetic preparations for the care of mouth and teeth; Cosmetic preparations for the hair and scalp; Cosmetic preparations, namely,

firming creams; Cosmetic preparations, namely, firming lotions; Cosmetic soaps; Cosmetic sun-protecting preparations; Cosmetic sunscreen preparations; Cosmetics; Cosmetics and cosmetic preparations; Essential oils; Essential oils for aromatherapy use; Face creams for cosmetic use; Foams containing cosmetics and sunscreens; Lotions for cosmetic purposes; Non-medicated hair treatment preparations for cosmetic purposes; Skin conditioning creams for cosmetic purposes; Wrinkle-minimizing cosmetic preparations for topical facial use” in Class 3 and “Cosmetic apparatus using ultrasound for performing aesthetic skin treatment procedures; Facial toning machines for cosmetic use; Medical devices for nonsurgical cosmetic treatments” in Class 10 (Ser. No. 86/503747) (collectively with the above registered marks, the “NU SKIN Marks”).

7. The foregoing registrations and application provide constructive notice of Petitioner’s ownership of its NU SKIN Marks.

8. Several of Petitioner’s NU SKIN Marks (Reg. Nos. 1433479, 1551560, 1542160, 2394310, 3037497, and 4268340) are also incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b).

9. Petitioner has sold billions of dollars’ worth of products under the NU SKIN Marks, and has spent hundreds of millions of dollars advertising and promoting its products under these trademarks.

10. As a result of Petitioner’s extensive marketing and promotion, coupled with the overwhelming commercial success of its products, Petitioner’s NU SKIN Marks have become famous and well known.

11. Respondent is using the NUEYE mark for an eye cream or eye serum.

12. Respondent markets the NUEYE product as “designed to prevent and correct wrinkles, fine lines, puffiness, dryness and dark circles” and claims that it “works to

continuously reverse skin damage, minimizes the appearance of future signs of aging, and restores youthful luminosity around the eyes.”

13. Respondent’s skin and eye cream products compete with Petitioner’s skin and eye cream products.

14. Respondent filed and obtained the Registration without Petitioner’s consent or permission.

COUNT I
Likelihood of Confusion
15 U.S.C. § 1052(d)

15. Petitioner realleges and incorporates by reference the preceding allegations of its Petition for Cancellation.

16. Since well prior to the filing date of the Registration and the alleged date of first use, Petitioner has used one or more of the NU SKIN Marks in connection with skin care products, including moisturizers, peels, masks, scrubs, cleansers, sun protection, and cosmetics.

17. Respondent’s NUEYE trademark so resembles Petitioner’s prior used and registered NU SKIN Marks as to be likely, when used in connection with the goods set forth in the Registration, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II
Likelihood of Dilution
15 U.S.C. § 1125(c)

18. Petitioner realleges and incorporates by reference the preceding allegations of its Petition for Cancellation.

19. Petitioner's NU SKIN Marks are famous and well known and became famous under 15 U.S.C. § 1125(c) well prior to the filing date of the Registration, the claimed date of first use set forth in the Registration, and any use of the mark upon which Respondent could rely.

20. Respondent's NUEYE trademark so resembles Petitioner's prior used and registered NU SKIN Marks as to dilute or to be likely to cause dilution of the distinctive quality of Petitioner's trademark by blurring under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Petitioner believes that it will be damaged by registration of the trademark shown in Registration No. 4656152 and respectfully requests that the petition for cancellation be sustained, and that the Registration be cancelled.

The filing fee in the amount of \$300 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

September 9, 2015

Respectfully submitted,

/Hope Hamilton/
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**Attorneys for Petitioner
NSE Products, Inc.**

CERTIFICATE OF SERVICE

I certify that on September 9, 2015, I served a true and correct copy of the above PETITION FOR CANCELLATION to the following by U.S. Mail, postage prepaid:

NuGene, Inc.
720 Paularino Ave., Suite 260
Costa Mesa, California 92626

and

Michael Bell
2931 Hickory Place
Fullerton, California 92835-2207

/Barbara A. Adams/
Barbara A. Adams

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